(2)

No. 01-1690

Supreme Court, U.S.
FILED
JUN 19 2002

In The
Supreme Court of the United States

PROPHETESS CORA HILL,
Petitioner,

v.

AMERICAN MEDICAL ASSOCIATION;
AMERICAN HOSPITAL ASSOCIATION;
U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT AMERICAN HOSPITAL ASSOCIATION

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QUESTIONS PRESENTED

I. Whether the U.S. Court of Appeals for the Fourth Circuit correctly held that the U.S. Magistrate Judge had authority under 28 U.S.C. § 636(c) to enter the November 21, 2000 order granting the American Hospital Association's motion to dismiss and the June 12, 2001 judgment dismissing the action with prejudice?

II. Whether the U.S. Court of Appeals for the Fourth Circuit correctly held that the District Court's dismissal of the Amended Complaint was proper?

LIST OF PARTIES AND RULE 29.6 STATEMENT

All parties to the proceeding in the U.S. Court of Appeals for the Fourth Circuit are listed in the caption of the case on the cover page of this brief. World Deliverance Health Foundation and Tree of Life Ministries were originally named as additional plaintiffs in the District Court. Their claims were voluntarily dismissed on April 14, 2000, and they were not parties to the proceeding in the Fourth Circuit.

Respondent American Hospital Association ("AHA") is organized as a not-for-profit corporation under the laws of the State of Illinois and is governed by a board of trustees. It is a tax-exempt trade association with a voluntary membership of approximately 4,500 institutional and 40,000 personal members. None of the AHA's members has a direct financial interest in the outcome of this case.

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COUNTERSTATEMENT OF THE CASE

On February 24, 2000, petitioner Prophetess Cora Hill (together with World Deliverance Health Foundation and Tree of Life Ministries) filed a *pro se* Complaint in the United States District Court for the Middle District of North Carolina against the American Medical Association ("AMA"), American Hospital Association ("AHA") and U.S. Department of Health and Human Services. The one-page Complaint alleged:

> The Parties hereto have overwhelmly [sic] "TORTED" the public in general and the minority population. Specifically, that there is "Little" to "No Hope" from this dreaded virus called HIV/AIDS. But, yet the Medications and other treatments are causing thousands to perish. For this reason, they have allowed Consumer's Fraud, Medical Malpractice's [sic] and Infra-Services [sic] with prejudices against minorities with HIV/AIDS and other epidemic disease with "covert" confusion and captivity that has lead to "Overt" destruction.

The Complaint then listed what appeared to be titles from a number of newspaper articles relating to the HIV/AIDS virus. On March 20, 2000, the AHA filed a motion to dismiss for lack of subject matter jurisdiction, lack of standing to sue, and failure to state a claim.

On March 31, 2000, Ms. Hill, World Deliverance Health Foundation and Tree of Life Ministries filed an Amended Complaint, which, similar to the original Complaint, stated in part:

> The parties hereto have overwhelmly [sic] "Tort" the public in general and the minority population specifically in believing that there is "Little" to "No Hope" from this dreaded virus called HIV/AIDS. But, yet the continued sale of medications and other treatments are causing thousands to perish. For this reason they have blatantly caused Consumer's Fraud, Medical Malpractice and Infra-Services [sic] with prejudices against minorities with HIV/AIDS and other epidemic diseases with "covert" confusion and captivity that has led to "overt" destruction. The same medications used to "cure" the white population are destroying the minority population. We ask why?

Attached to the Amended Complaint were a number of newspaper articles concerning the HIV/AIDS virus. The AHA filed a motion to dismiss the Amended Complaint on April 12, 2000 on the same grounds cited in its initial motion to dismiss. The claims of World Deliverance Health Foundation and Tree of Life Ministries were voluntarily dismissed on April 14, 2000.

On April 20 2000, Ms. Hill filed a motion for entry of a default judgment against the AMA due to its failure to respond to the Complaint. The U.S. Department of Health and Human Services filed a motion to dismiss the Amended Complaint on April 27, 2000.

On July 31, 2000, a hearing was held by a U.S. Magistrate Judge on the motions to dismiss and on Ms. Hill's motion for entry of a default judgment against the AMA. On August 4, 2000, a default judgment was entered against the AMA. On August 15, 2000, the Magistrate Judge recommended that the motions to dismiss be granted.

On August 17, 2000, the AMA filed a motion to set aside the default judgment entered against it.

On September 28, 2000, an Order of Reference was entered by the District Court referring the case to the Magistrate Judge pursuant to 28 U.S.C. § 636(c) for all proceedings. On October 31, 2000, the District Court entered a Reaffirmed Order of Reference in light of the fact that two written consents to the referral of the case to the U.S. Magistrate Judge had been received after the entry of the earlier Order of Reference on September 28, 2000. The Magistrate Judge entered an order granting the motions to dismiss the claims against the AHA and the U.S. Department of Health and Human Services on November 21, 2000.

On January 8, 2001, Ms. Hill appealed the November 21, 2000 dismissal order to the United States Court of Appeals for the Fourth Circuit. However, as

the November 21, 2000 Order of Dismissal did not resolve Ms. Hill's claim against the AMA, the appeal was dismissed due to lack of jurisdiction on March 30, 2001.

After the default judgment against the AMA was set aside and a motion to dismiss the claim against the AMA was granted, the Magistrate Judge entered a final judgment dismissing the action with prejudice on June 12, 2001.

Ms. Hill appealed the judgment to the Fourth Circuit on August 8, 2001. The Fourth Circuit affirmed the judgment on October 11, 2001. A petition for rehearing was denied by the Fourth Circuit on December 18, 2001.

Petitioner filed a petition for a writ of certiorari in this Court on January 18, 2002.

ARGUMENT

Ms. Hill offers the Court no basis upon which to grant the petition for a writ of certiorari. Ms. Hill does not argue that the Fourth Circuit's decision in this case is in conflict with a decision of another federal or state court, nor does she contend that this case involves an important question of federal law or otherwise warrants the Court's exercise of its discretionary jurisdiction. Accordingly, the AHA will only briefly discuss why the Fourth Circuit correctly upheld the judgment of the District Court.

I. The Magistrate Judge Had Authority To Grant The AHA's Motion To Dismiss The Amended Complaint And To Enter Judgment Dismissing The Action With Prejudice.

All parties consented to the referral of the case to a Magistrate Judge for all proceedings under 28 U.S.C. § 636(c). On October 31, 2000, Chief U.S. District Judge Tilley entered a Reaffirmed Order of Reference in light of the fact that two written consents had been received after the entry of the prior Order of Reference. Accordingly, at the time of the entry of the order granting the AHA's motion to dismiss on November 21, 2000, the Magistrate Judge had full authority under 28 U.S.C. § 636(c) to conduct all proceedings in this case, including the entry of an order of dismissal. The U.S. Magistrate Judge also had full authority under 28 U.S.C. § 636(c) to enter the June 12, 2001 judgment dismissing this action with prejudice.

II. The District Court Correctly Granted The AHA's Motion To Dismiss The Amended Complaint.

The AHA's motion to dismiss the Amended Complaint was properly granted for a number of reasons.

First, as the District Court recognized, the Amended Complaint did not identify any basis for the exercise of subject matter jurisdiction. It is "hornbook law" that a plaintiff seeking relief in a federal court has the burden of alleging and proving the facts conferring subject matter jurisdiction upon the court. *Sligh v. Doe*, 596 F.2d 1169, 1170 (4th Cir. 1979) (*citing McNutt v.*

General Motors Acceptance Corp., 298 U.S. 178 (1936)). Ms. Hill's allegation that the defendants had "TORT" the public did not raise a federal question under 28 U.S.C. § 1331, and Ms. Hill made no allegation that would support a finding of diversity jurisdiction under 28 U.S.C. § 1332. Ms. Hill's failure to allege a foundation for the District Court to exercise subject matter jurisdiction warranted dismissal under Fed. R. Civ. P. 12(b)(1).

Second, the District Court correctly concluded that Ms. Hill lacked the requisite standing to sue under Article III, § 2 of the U.S. Constitution. While it is very difficult to discern from the Amended Complaint the exact nature of Ms. Hill's grievance, she apparently purported to sue on behalf of "the public in general and the minority population." There is nothing in the Amended Complaint, however, which showed "'an invasion of a legally protected interest' that is 'concrete and particularized.'" *Koenick v. Felton*, 190 F.3d 259, 263 (4th Cir. 1999), *cert. denied*, 528 U.S. 1118 (2000) (*quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560) (1992)). An interest shared with the public at large is not sufficient to create standing, *id.* (*citing Lujan*, 504 U.S. at 573-76), and it is a general rule that "a litigant is not permitted to assert the legal rights of others." *Mackey v. Nationwide Ins. Cos.*, 724 F.2d 419, 421-22 (4th Cir. 1984). Ms. Hill's Amended Complaint contained no allegation of direct injury to her. Accordingly, due to Ms. Hill's failure to allege facts showing that she had proper standing to sue, Ms. Hill's claims against the AHA were properly dismissed pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

Third, the District Court correctly concluded that the Amended Complaint failed to state a claim against the AHA upon which relief could be granted. Even when read with the liberality afforded to *pro se* pleadings, the Amended Complaint did not set forth any cognizable claim for relief against the AHA. Alleging only that defendants "have overwhelmly [sic] 'TORT' the public in general and the minority population" in connection with the HIV/AIDS virus and treatments therefor, the Amended Complaint did not give the AHA notice of any particular legal claim. Thus, Ms. Hill's claims against the AHA were properly dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

III. The Fourth Circuit Correctly Affirmed The Judgment Of The District Court.

The Magistrate Judge had authority under 28 U.S.C. § 636(c) to enter an order granting the AHA's motion to dismiss and to enter a final judgment dismissing the action with prejudice. Also, the District Court properly dismissed the Amended Complaint for lack of subject matter jurisdiction, for lack of standing to sue, and for failure to state a claim. Accordingly, the Fourth Circuit correctly affirmed the judgment of the District Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

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